

SECOND REGULAR SESSION

SENATE BILL NO. 1333

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS CASKEY AND SHIELDS.

Read 1st time March 1, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4809S.01I

AN ACT

To amend chapter 250, RSMo, by adding thereto thirteen new sections relating to the formation of an authority to provide wholesale water and wastewater service.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 250, RSMo, is amended by adding thereto thirteen new sections, to be known as sections 250.300, 250.305, 250.310, 250.315, 250.320, 250.325, 250.330, 250.335, 250.340, 250.345, 250.350, 250.355, and 250.360, to read as follows:

250.300. Sections 250.300 to 250.360 shall be known as the "Wholesale Water and Sewer Authority Act".

250.305. As used in sections 250.300 to 250.360, the following terms shall mean:

(1) "Authority" shall mean a wholesale water and sewer authority organized pursuant to sections 250.300 to 250.360.

(2) "Obligations", bonds or notes issued by the authority in accordance with sections 250.300 to 250.360.

(3) "Project", facilities and distribution systems used for wholesale water supply or distribution, or facilities and collection systems used for wholesale wastewater treatment or collection.

(4) "Provider", any political subdivision of this state owning or operating a water system or a wastewater system, or both, which petitions for the formation of an authority or which is added to the membership of an authority once such authority is formed.

250.310. An authority may be created to fund, promote, plan, design, construct, improve, acquire, maintain, and operate one or more projects or to assist in such activity.

250.315. 1. Whenever the creation of an authority is desired, two or more providers shall file a petition in the circuit court of any county in which all or a

portion of a project is proposed to be located requesting creation of an authority.

2. The petition shall set forth:

(1) A recital that the governing bodies of the providers have approved filing the petition. A resolution or ordinance of each of such governing bodies calling for the establishment of the authority shall be attached to the petition;

(2) A general description of the initial project or projects proposed to be undertaken by the authority, including a description of the approximate location thereof;

(3) The number of initial members of the board of directors of the authority;

(4) The name of the proposed authority;

(5) A proposal for funding the authority initially, pursuant to the authority granted in sections 250.305 to 250.360;

(6) A request that the court enter its judgment that the authority is thereby formed as a political subdivision of the state.

250.320. 1. The circuit clerk in whose office the petition was filed shall give notice to the public by causing one or more newspapers of general circulation serving the proposed providers to publish once a week for four consecutive weeks a notice substantially in the following form:

**NOTICE OF PETITION FOR THE CREATION AND FUNDING OF A WHOLESALE
WATER AND SEWER AUTHORITY**

Notice is hereby given to all persons residing in(here specifically describe the proposed providers), within the state of Missouri, that a petition has been filed asking that a wholesale water and sewer authority by the name of "..... Wholesale Water and Sewer Authority" be formed for the purpose of developing the following project: (here summarize the proposed project or projects). A copy of this petition is on file and available at the office of the clerk of the circuit court of County, located at, Missouri. You are notified to join in or file your own petition supporting or answer opposing the creation of the wholesale water and sewer authority and requesting a declaratory judgment, as required by law, no later than the day of, 20... You may show cause, if any there be, why such petition is defective or proposed wholesale water and sewer authority or its funding method, as set forth in the petition, is illegal, unconstitutional, unjust, or unreasonable and should not be approved by this court.

.....

Clerk of the Circuit Court of County

2. The circuit court may also order a public hearing on the question of the creation and funding of the proposed authority, if it deems such appropriate, under such terms and conditions as it deems appropriate. If a public hearing is

ordered, notice of the time, date, and place of the hearing shall also be given in the notice specified in subsection 1 of this section. The court, for good cause shown, may continue the case or the hearing thereon from time to time until final disposition thereof.

250.325. 1. Any resident of any provider may join in or file a petition supporting or answer opposing the creation of the authority and seeking a declaratory judgment respecting these same issues within thirty days after the date notice is last published by the circuit clerk.

2. The court shall hear the case without a jury. If the court shall thereafter determine the petition is defective or the proposed authority is illegal, unconstitutional, unjust, or unreasonable, it shall enter its declaratory judgment to that effect and shall refuse to make the certifications requested in the pleadings. If the court determines that any proposed funding method is illegal, unconstitutional, unjust, or unreasonable it shall enter its judgment striking that funding method in whole or in part. If the court determines the petition is not legally defective and the proposed authority and method of funding is not illegal, unconstitutional, unjust, or unreasonable, the court shall enter its judgment to that effect. The court shall then declare the authority organized as a political subdivision of the state.

3. Any party having filed an answer or petition may appeal the circuit court's order or declaratory judgment in the same manner provided for other appeals.

250.330. The costs of filing and defending the petition and all publication and incidental costs incurred in obtaining circuit court certification of the petition shall be paid by the petitioners. If an authority is organized under sections 250.300 to 250.360, the petitioners may be reimbursed for such costs out of the revenues received by the authority.

250.335. Following the approval of the formation of the authority by the court, an authority may add to its membership providers not joining in the original petition. Such additional providers may be added in accordance with the following procedure. The authority shall hold a public hearing regarding the proposed additional provider and shall give notice to the public by causing one or more newspapers of general circulation serving the existing providers and proposed additional provider, to publish once a week for two consecutive weeks prior to the week in which the public hearing is held a notice substantially in the following form:

NOTICE OF NEW PROVIDER FOR THE WHOLESALE WATER
AND SEWER AUTHORITY

Notice is hereby given to all persons residing in..... (here specifically describe the applicable providers), within the state of Missouri, that the "..... Wholesale Water and Sewer Authority" will be holding a public hearing on (insert date) at (insert time) regarding the following: (here summarize the addition of proposed providers). The authority shall receive all public comments at the public hearing, and following the closure thereof may, by a vote of a majority of the board of directors, add such provider to the membership of the authority.

250.340. The presiding officer, or that person's designee, of each provider shall, with the consent of the governing body of the provider, appoint one member and an alternate to the board of directors. Each director or alternate shall reside within the boundaries of the provider appointing such director, and each such provider shall have the ability to remove the director or alternate representing such entity with or without cause. Each director or alternate shall serve until removed by the provider appointing them or until disqualified.

250.345. 1. The board shall possess and exercise all of the authority's legislative and executive powers, as such powers are more fully described in sections 250.300 to 250.360.

2. Within thirty days after the formation of the authority, the board shall meet. At its first meeting, the board shall elect a chairman from its members. The chairman shall preside at all meetings of the board and, except as otherwise delegated by the board, shall execute all legal instruments of the authority. The chairman shall be the principal executive officer of the authority with full responsibility for the planning, operations, and administrative affairs of the commission and the coordination thereof pursuant to policies and programs approved by the board from time to time and shall perform such other duties as the board may prescribe. The chairman may conduct the ordinary and customary business of the authority between meetings of the board.

3. The board shall appoint an authority secretary and such other officers or employees as it deems necessary.

4. At the first meeting, the board, by resolution, shall define the first and subsequent fiscal years of the authority and may adopt a corporate seal.

5. A simple majority of the board shall constitute a quorum. If a quorum exists, a majority of those voting shall have the authority to act in the name of the board, and approve any board resolution, except a resolution to authorize obligations which shall require the approval of a majority of the entire board of directors.

6. Each director shall devote such time to the duties of the office as the

faithful discharge thereof may require and may be reimbursed for his actual expenditures in the performance of his duties on behalf of the authority.

250.350. In furtherance of the purpose of the authority and sections 250.300 to 250.360, the board of directors of the authority shall have the following powers:

(1) To accept by gift or grant from any person, firm, corporation, trust, or foundation, or from this state or any other state or any political subdivision or municipality thereof, or from the United States, any funds or property or any interest therein for the uses and purposes of the authority and to hold title thereto in trust or otherwise and to bind the authority to apply the same according to the terms of such gift or grant;

(2) To sue and be sued;

(3) To enter into franchises, contracts, and agreements with this or any other state or the United States or any municipality, political subdivision, or authority thereof, or any of their agencies or instrumentalities, or any public or private person, partnership, association, or corporation of this state or of any other state or the United States, and this state for the planning, development, construction, acquisition, or operation of any project, for the wholesale supply of water, including the purchase of guaranteed minimum or maximum quantities, the provision of wastewater services, including the purchase of guaranteed minimum or maximum quantities, or for any other service rendered to, for, or by the authority for such term of years as the board of directors of the authority may approve; and any such municipality, political subdivision, authority, or any of their agencies or instrumentalities, and any such public or private person, partnership, association, or corporation is hereby authorized to enter into contracts and agreements with such authority for such term of years as may be approved by such persons or the governing body of such entities, as applicable, for the planning, development, construction, acquisition, or operation of any facility, for the wholesale supply of water, including the purchase of guaranteed minimum or maximum quantities, the provision of wastewater services, including the purchase of guaranteed minimum or maximum quantities, or for any other service rendered to, for, or by the authority;

(4) To borrow money and evidence the same by obligations as hereinafter provided in this act, and to refund the same by the issuance of refunding obligations;

(5) To acquire land and interests in land and other property by sale, lease, gift, purchase, exchange, or eminent domain, such power of eminent domain to be exercised in the furtherance of any authorized purpose of the authority and according to the procedures set forth in chapter 523, RSMo; and to sell, lease,

abolish, or otherwise dispose of such land, interests therein, or other property;

(6) To acquire by purchase or lease, facilities for the wholesale production, distribution, and utilization of water and the wholesale collection and treatment of wastewater;

(7) To operate and maintain any of the facilities owned or acquired by the authority;

(8) To establish a system of fees and charges for services provided by the authority;

(9) To provide wholesale water service and wholesale wastewater service to providers utilizing the projects acquired or constructed by the authority, and to furnish retail water service and sewer service to end users, provided that in the case of provision of retail water or sewer service the authority receives the prior written consent, whether in blanket form or otherwise, of a provider in this state in which the end user is located, and further provided that in the case of provision of retail service, such service is provided as incident to an agreement between the authority and one or more property owners related to acquisition of real property or rights therein for the purpose of constructing a portion of a project to be owned by an authority;

(10) To have the general management, control, and supervision of all the business, affairs, property, and facilities of the authority, and of the construction, installation, operation, and maintenance of authority improvements, and to establish regulations relating thereto;

(11) To hire and retain agents, employees, engineers, and attorneys and to determine their compensation;

(12) To adopt and amend rules and regulations not in conflict with the constitution and laws of this state, necessary for the carrying on of the business, objects, and affairs of the board of directors and of the authority;

(13) To invest the funds of the authority not needed for current operations in either open time deposits or certificates of deposit secured pursuant to the provisions of sections 110.010 and 110.020, RSMo, or in bonds of the state of Missouri, of the United States, or of any wholly owned corporation of the United States, or in other short term obligations of the United States, or in any instrument permitted by law for the investment of state moneys; and

(14) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes of sections 250.300 to 250.360.

250.355. 1. In addition to the other powers granted to the authority and

providers herein, providers and an authority may enter into purchase agreements for the purchase, sale, exchange, or transmission of wholesale water or wastewater service whereby the purchaser is obligated to make payments in amounts which shall be sufficient to enable the authority to meet its expenses, interest, and principal payments, whether at maturity or upon sinking fund redemption, for its obligations, reasonable reserves for debt service, operation, maintenance, renewals, replacements, and the requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture, or other security instrument. Purchase agreements may contain such other terms and conditions as the authority and the providers may determine, including provisions whereby the purchaser is obligated to pay for wholesale water or wastewater service irrespective of whether such wholesale water or wastewater service is produced or delivered to the provider, or collected or delivered to the authority, or whether any project contemplated by any such agreement is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the services of such project. Such agreements may be for a term covering the life of a project or for any other term, or for an indefinite period. An agreement among providers and an authority may provide that if one or more of the providers default in the payment of its obligations under any such agreement, the remaining purchasers which also have such agreements shall be required to accept and pay for and shall be entitled proportionately to use or otherwise dispose of the wholesale water or wastewater service purchased by the defaulting purchaser.

2. The obligations of a provider under a purchase agreement with an authority or arising out of the default by any other provider with respect to such an agreement shall not be construed to constitute debt of the provider. To the extent provided in the purchase agreement, such obligations shall constitute special obligations of the municipality, payable solely from the revenues and other moneys derived by the municipality from its municipal utility and shall be treated as expenses of operating a municipal utility.

250.360. 1. An authority may at any time authorize or issue obligations for the purpose of paying all or any part of the cost of any project. Every issue of such obligations shall be payable by a pledge of the net revenues of the wholesale water system, wholesale sewer system, or a combination thereof, as the case may be, of the authority, including without limitation, the proceeds of any agreement with any provider for the sale of wholesale water or wastewater services, and may be further secured by other property of the authority which may be pledged, assigned, mortgaged, or a security interest granted for such payment, without preference or

priority of the first obligations issued, subject to any agreement with the holders of any other obligations pledging any specified property or revenues. Such obligations shall be authorized by resolution of the majority of the entire board of directors of the authority, and if issued by the authority, shall bear such date or dates, and shall mature at such time or times, but not in excess of forty years, as the resolution shall specify. Such obligations shall be in such denomination, bear interest at such rate or rates, be in such form, either coupon or registered, be issued as current interest obligations, compound interest obligations, variable rate obligations, convertible obligations, or zero coupon obligations, be issued in such manner, be payable in such place or places, and subject to redemption as such resolution may provide notwithstanding the provisions of section 108.170, RSMo. The obligations may be sold at either public or private sale, at such interest rates, and at such price or prices as the authority shall determine.

2. Any issue of authority obligations outstanding may be refunded at any time by the authority by issuing its refunding obligations in such amount as the authority may deem necessary. Such obligations may not exceed the amount sufficient to refund the principal of the obligations so to be refunded together with any unpaid interest thereon and any premiums, commissions, service fees, and other expenses necessary to be paid in connection with the refunding. Any such refunding may be effected either by sale of the refunding obligations and the application of the proceeds thereof to the payment of the obligations being refunded or by the exchange of the refunding obligations for the obligations being refunded with the consent of the holder or holders of the obligations being refunded. Refunding obligations may be issued regardless of whether the obligations being refunded were issued in connection with the same project or a separate project and regardless of whether the obligations proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise.

3. Bonds issued under this section shall exclusively be the responsibility of the authority, payable solely out of authority funds and property provided in sections 250.300 to 250.360, and shall not constitute a debt or liability of the state of Missouri or any agency or political subdivision of the state, or any of the providers. The authority shall not be obligated to pay such obligations with any funds other than those specifically pledged to repayment of the obligations. Any obligations issued by an authority shall state on their face that they are not obligations of the state of Missouri or any agency or political subdivision thereof other than the authority.

4. Bonds issued under this section, the interest thereon, or any proceeds

from such obligations shall be exempt from taxation in the state of Missouri for all purposes except the state estate tax.

5. The authority may enter into funding or financing arrangements or any other contract or agreement with any person or business entity, or any federal, state, or local government agency or authority deemed necessary or desirable to fund, finance, or effectuate any project, including without limitation, credit enhancement, credit support, or interest rate agreements.

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